

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUCCESSFACTORS, INC. a Delaware
corporation,

Plaintiff,

v.

SOFTSCAPE, INC., a Delaware
corporation; and DOES 1-10,

Defendants.

No. C 08-1376 CW

TEMPORARY
RESTRAINING ORDER
AND ORDER TO SHOW
CAUSE WHY A
PRELIMINARY
INJUNCTION SHOULD
NOT ISSUE

_____ /

Plaintiff SuccessFactors, Inc.'s motion for a temporary restraining order and application for expedited discovery were filed on March 11, 2008, with notice to Defendant Softscape. Defendant filed an opposition on March 12, 2008. Having considered the parties' papers, the Court grants in part Plaintiff's motion for a temporary restraining order, grants in part Plaintiff's motion for expedited discovery and orders Defendant to respond to the remainder of Plaintiff's motion for expedited discovery and to show cause why a preliminary injunction should not issue.

A temporary restraining order may be issued only if "immediate and irreparable injury, loss, or damage will result to the applicant" if the order does not issue. Fed. R. Civ. P. 65(b). To obtain a temporary restraining order, the moving party must

1 establish either: (1) a combination of probable success on the
2 merits and the possibility of irreparable harm, or (2) that serious
3 questions regarding the merits exist and the balance of hardships
4 tips sharply in the moving party's favor. See Baby Tam & Co. v.
5 City of Las Vegas, 154 F.3d 1097, 1100 (9th Cir. 1998); Rodeo
6 Collection, Ltd. v. W. Seventh, 812 F.2d 1215, 1217 (9th Cir.
7 1987).

8 The Court finds that Plaintiff has made a sufficient showing
9 that serious questions regarding the merits exist and the balance
10 of hardships tips sharply in its favor to justify granting the
11 relief it seeks. Therefore, the motion for a temporary restraining
12 order is GRANTED and Defendant and its agents are hereby ORDERED to
13 refrain from:

14 (1) Publishing, circulating, e-mailing, making available or
15 otherwise distributing any product or document using
16 Plaintiff's trademarks or Plaintiff's secret information.

17 (2) Accessing for improper reason any computer system or
18 computer owned, operated or licensed by Plaintiff and
19 subject to restrictions on access without Plaintiff's
20 express written authorization.

21 (3) Making any statements that purport to be made by anybody
22 other rather than Defendant or its agents.

23 This temporary restraining order is effective on Plaintiff's
24 posting a bond in the amount of \$10,000. The temporary restraining
25 order shall remain in effect until the Court rules on Plaintiff's
26 motion for a preliminary injunction.

27 General counsel for Defendant declares that Defendant "has
28

1 never and is not now using the Presentation in external sales
2 meetings or marketing efforts, and has no intention to release on
3 the internet, or otherwise publish externally, the Presentation."
4 Mohr Decl. ¶ 5; see also Defendant's Opposition at 3. Therefore,
5 the Court need not grant Plaintiff's request that this order enjoin
6 Defendant from publishing, circulating, e-mailing, making available
7 or otherwise distributing the Presentation.

8 It is further ORDERED that Plaintiff may serve its proposed
9 subpoenas on Verizon Internet Services Inc. and Comcast Cable
10 Communications Holdings, Inc. Defendant shall file a response to
11 the remainder of Plaintiff's motion for expedited discovery by
12 March 17, 2008. Any reply shall be filed by March 21, 2008 and the
13 motion will be heard on March 27, 2007.

14 Finally, it is ORDERED that Defendant show cause before this
15 Court on March 27, 2008 at 2:00 p.m., or as soon thereafter as
16 counsel may be heard, why an order should not be issued pursuant to
17 Rule 65 of the Federal Rules of Civil Procedure enjoining Defendant
18 or its agents during the pendency of this action from publishing,
19 circulating, e-mailing, making available or otherwise distributing
20 any product or document using Plaintiff's trademarks or Plaintiff's
21 secret information, from accessing for improper reason any computer
22 system or computer owned, operated or licensed by Plaintiff and
23 subject to restrictions on access without Plaintiff's express
24 written authorization, and from making any statements that purport
25 to be made by anybody other than Defendant or its agents.

26 If Defendant wishes, it may respond to this order to show
27 cause by filing a written submission on or before March 17, 2008.

1 If Defendant files a written submission, Plaintiffs may reply on or
2 before March 21, 2008.

3 IT IS SO ORDERED.

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5 Dated: 3/13/08



CLAUDIA WILKEN
United States District Judge